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File No. O D 8-I/57

Legal Deptt

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Subject:—

Opinions under the Defence of India Act, 1939

P.9 (8)

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C O N T E N T S.

Legal Department File O. Def. of India/1951.

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15/6

K.S.R. 15/6

RAU/15-6.

5 c.

Legal Department.

R.I. No. 9486 dt. 10-5-1951.

Submitted.

Please see R.L.A.'s opinions No.9212 dated 20-9-1948 and No. 15336 dated 3-11-1950. The Government of India, Ministry of Defence in reply states that the Interests Act is not applicable to the payment of compensation under the Defence of India Rules but in cases where payment has been delayed for a long time and the claimant is a poor man interest may be paid at 4% per annum on an ex-gratia basis. R.D. does not agree with this and states that would not be possible to discriminate between the rich and poor and that the general principle in the Interests Act that interest should be paid in all cases irrespective of the fact whether the claimant concerned is poor or rich should be applied without and distinction. Before Government of India are addressed the papers are shown to the R.L.A. for remarks.

2. As already pointed out by the R.L.A. ~~xxxxxx~~ in his opinion No.15336, dated 3-11-1950, on the general principle laid down in the Interests Act, 1839 and also on grounds of equity and justice the landowner would be entitled to interest for the inordinate delay in paying the compensation. The Government of India agrees that the poor claimant should be paid interest at the rate of 4% per annum on an ex-gratia basis as equitable compensation for being kept out of the dues for a very long time. As rightly pointed out by the R.D. no such discrimination can be made between the rich and the poor particularly now when such discrimination would offend article 14 of the Constitution. There is, therefore, no objection to R.D. addressing the Government of India on the above lines.

Sd/- P.S. Kadkarni 11/5

D.S.(C) Govt. of India may be informed that if payment of interest by way of compensation is to be made even on an ex-gratia basis, it will have to be made to the rich and poor alike since otherwise it would be contrary to Art. 14 of the Constitution.

Id/- R.T.L. 16/5.

~~Author~~ ~~already~~ ~~advised~~ ~~claim~~ ~~interest~~ ~~only~~ ~~ground~~ ~~equity~~ ~~justice~~.

~~xxx~~

Reply.

Legal Department

As the R.L.A. has already advised, the claim to interest can only be made on the ground of equity and justice. As it is an ex-gratia payment and not a statutory liability, Article 14 of the Constitution has not a application. The R.D. may merely press their point of view on the ground of equity or justice and inexpediency of making such a distinction between the rich and poor claimants.

Id/-

Additional Secretary to Government.

U.O. to R.D. No.7701, dated 17th May 1951.

KAH/18-6
4 c.

Defence of India Act, 1939.
Section 19 (1),
Defence of India Rules 1939
Rule 75 A (1)
Bombay Land Revenue Code, 1879
Sections 45, 48 and 195.

Office of the R.L.A.

When land is requisitioned, the land does not vest absolutely in Government and the owner still remains the owner. On the other hand the relation between the owner and the requisitioning authority is not that of landlord and tenant. (See para 1 of R.L.A.'s opinion No. 3093 dt. 9/5/42.) Requisitioning of property merely means taking immediate possession of property for certain purposes. It does not divest the owner of any of his inherent rights, nor does it clothe the Government with any right of ownership. It merely suspends during the period of requisition some of the owner's rights e.g. the right to let the property. (See also R.L.A's opinions No. 117 Confl. dt. 9/3/43, No. 6077 dt. 22/6/42, No.2068 dt. 11/2/30 and No. 15321 dt. 13/11/30.) Hence the view taken by the Revenue Department that the Central Government is in the position of a tenant of the requisitioned lands, is not correct.

As by requisitioning the property does not vest in Government the taxes on the property will have to be paid. The requisitioned lands would therefore continue to be liable to payment of revenue under section 45 of the Bombay Land Revenue Code, 1879. If the use of the land has been altered it would become liable to new assessment under section 48 of the Act.

The owner of the requisitioned premises being the superior holder, he would be liable for the payment of the land revenue (cf. second last para of R.L.A's opinion No. 5034 dt. 19/6/42). Besides, clause 4 of the Specimen form of agreement provides that the owner shall pay the land revenue and municipal or other taxes. The view taken by the Revenue Department

this respect is correct.

Since by requisitioning the relation of landlord and tenant is not established between the owner and Government, the Bombay Tenancy and Agricultural Lands Act, 1948 will not apply to requisitioned lands and there can be no question of amendment of Government Resolution No. 7556/39 dated the 6th July 1942. The compensation is fixed under section 19 of Defence of India Act, 1939 and not under the Bombay Tenancy and Agricultural Lands Act, 1948.

Id/- J.R.D. 4/7

Remembrancer of Legal Affairs.

v.R. to R.D., No. 10669, dated the 6th July 1951.

RAR/15-6.
4 c.

Legal Department.

Defence of India Act, 1939

Section 39.

Defence of India Rules, 1939

Rules 75 A (1)

Flat on the first floor of Rusi Mansion, Godehouse Road, Colaba, was requisitioned by the Collector of Bombay under Rules 75 A (1) of the Defence of India Rules by order No. M.S.C. 467 H dated the 29th March 1944 of his intention to requisition the flat in questions. In reply to the notice, the landlord informed the Collector that he had already agreed to let the flat to Shri Gobhai, who subsequently occupied it on 31st March 1944. The Requisition Order was served on the landlord on 4th April 1944 and vacant possession was obtained on 15th May 1944 by evicting Shri Gobhai. The latter's claim for compensation on the ground of personal inconvenience for being compelled to change his residence, was rejected in the first instance by the Government of India, but Shri Gobhai has requested reconsideration of his claim. The Solicitor to the Central Government considers the claim to be reasonable but the Collector of Bombay thinks that the claim should be rejected on the ground that Shri Gobhai was and unauthorised tenant of the said flat.

The question for R.L.A's consideration is whether Shri Gobhai is entitled to any compensation and on what grounds.

It appears that on receipt of letter No. MSC/ Accommodation dated 18th March 1944, the landlord passed it on to Shri Gobhai, who it was alleged had agreed to take up the flat from April 1944. He had even paid the rent in advance for the month of April 1944. By letter dated 24th March 1944 Shri Gobhai informed the Collector of Bombay of these facts, also requesting that the flat should not be requisitioned

as he had already been deprived of his bungalow at Versova, which was requisitioned for the Military authorities. The requisition under which was issued on 29th March 1944 was received by the landlord on 4th April 1944 i.e. after Shri Gobhai occupied the flat. In view of these facts it cannot be said that Shri Gobhai was the unauthorised tenant. Besides, the Collector's letter dated 18th March 1944 could not have the effect of precluding the landlord from letting flat as it was without any statutory force and it merely intimated that the flat may be requisitioned in future. In view of this, it appears that Shri Gobhai being the legal tenant he would be entitled to the expenses incurred for removal from the flat. As per Government of India, Defence Department letter 17-DC 1607/44 dated 25th May 1944 he may be paid a month's rent towards these expenses or at the most the actual expenses incurred for shifting. (see R.L.Ass No. 11505 dated 2nd December 1947 and Advocate General's opinions Nos. 32 of1945 and 18 of 1948 dated 17th December 1945 and 31st March 1948 respectively). As Shri Gobhai does not intend to return to the premises he would not be entitled to any other compensation, nor would he be entitled to Rs. 1000/- claimed on account of personal inconvenience and hardship.

Id/-

Additional Secretary to Government.

U.R. to R.D. , No. 12671, dated the 7th, August 1951.

KAN/15-6.
4 e.

No. 15507

Legal Department,
Bombay Castle, (Bombay No.1), 28th

September 1951.

To

The Collector of Bombay.

Subject:- Property requisitioned under the Defence of India Rules— Chawan Bhuvan, Gamdevi, Bombay.

Sir,

With reference to your letter No. MSMC 467-A/7/19, dated the 9th August 1951, I have the honour to forward herewith ~~a~~ my ~~gm~~ opinion in the above matter.

Yours faithfully,

Id/-

Additional Secretary to Government.

KAH/15-6.
4 c.

Legal Department.

Defence of India Act, 1939
Section 19
Defence of India Rules, 1939
Rule 75A (1)
Requisitioned Land (Continuance of Power) Act, 1947
Section 3.

The premises having been requisitioned under Rules 75-A (1) of the Defence of India Rules, they will be deemed to have been continued under requisition under section 3 of the Requisitioned Land (Continuance of Power) Act, 1947, and the compensation in respect of the property would be the same as under section 19 of the Defence of India Act. In view of the condition in the requisition Order that the property would be restored to the owner as far as possible in the same condition it was when it was requisitioned compensation would be payable if the property has deteriorated. The owner would be entitled to such compensation as would be necessary to put the same condition in which they were when requisitioned. Government would thus be liable to pay compensation for deterioration (cf. H.L.A's opinion No. 839 dated 23.1.1948).

Id/-

Additional Secretary to Government.

KAH/15-6.
4 C.